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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1951.

No. 629.

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

v.

TISHMAN REALTY & CONSTRUCTION COMPANY, INC.,
Defendant-Petitioner,

and

49,375 SQUARE FEET, MORE OR LESS, IN THE BOROUGH OF MANHATTAN, CITY AND STATE OF NEW YORK, and METROPOLITAN LIFE INSURANCE COMPANY, CITY OF NEW YORK, PEOPLE OF THE STATE OF NEW YORK,

Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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49,375 SQUARE FEET, MORE OR LESS, IN THE BOROUGH OF MANHATTAN, CITY AND STATE OF NEW YORK, and METROPOLITAN LIFE INSURANCE COMPANY, CITY OF NEW YORK, PEOPLE OF THE STATE OF NEW YORK,

Defendants.

Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Defendant-Petitioner Tishman Realty & Construction Company, Inc., respectfully prays the issuance of a writ of certiorari to the United States Court of Appeals for the Second Circuit to review a judgment and decision of that Court which affirmed on opinion below a judgment entered by the United States District Court for the Southern District of New York on July 27, 1950, fixing $3,090,000 as the compensation to be paid for the taking of petitioner's property under eminent domain (pp. 646-8).

JURISDICTION.

The judgment of the Court of Appeals was entered on January 2, 1952. The jurisdiction of this Court is invoked under Sections 1254 (1) and 2101 (c) of Title 28, United States Code.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioner's property—a sixteen-story office and loft building occupying a blockfront 250 x 200 feet on Seventh Avenue, New York City—was condemned under the Declaration of Taking Act (40 U. S. C. §§258a, *et seq.*) for use by the Veterans Administration as a Regional Office (p. 12).

The judgment rendered below awarded only 3% more than the Government's estimated value ($3,000,000, p. 13), though the claimant had refused $3,500,000 offered by a third party for the property six months before it was taken (pp. 616-9 and stipulation, pp. 598-9).

The decision below was based on a novel and erroneous ruling of law: In valuing this income-producing business property, the Trial Judge refused to give *any* consideration to capitalization of earnings—"my valuation of the building is not at all on an income basis" (p. 513)—holding that it was precluded from doing so by reason of the New York emergency rent laws (pp. 506-7).

It is undisputed that under the New York emergency rent laws, during the period of the statutory

emergency*, a landlord may not collect rent exceeding a defined "emergency rent" unless he obtains a higher "reasonable rent based on the fair rental value" by legal proceedings, by arbitration or by agreement of the tenant. Despite these methods provided by State law for fixing and obtaining a fair rental value, the Trial Judge held that the State statute prevented him from finding or considering fair rental value in a Federal condemnation proceeding.

Having thus refused to utilize the income approach, the Court considered itself relegated to a last-resort arithmetical formula that was incapable of yielding just compensation:

> "there is nothing left but to *attempt*** to value the building on a unit basis, taking into consideration *for what they are worth* the recent sales of property somewhere nearly equivalent to the subject premises. Of these, the government seems to concede there are only four * * *" (Opinion, p. 509).

As a matter of law, the four sales so relied on were not capable of establishing value. One was a transfer between two companies owned by the same man, another was a sale to a tenant holding a lease disadvantageous to the owner, and a third was under compulsion of law. Thus only one was a sale at arms' length between willing parties, and even that admittedly involved a dissimilar building in a different neighborhood (*post*, pp. 14-15).

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* Since 1945, the emergency has been redeclared each year *for a period of one year* by the State Legislature.

** Italics ours throughout.

Four such "sales" do not afford "any assurance that the prices paid would have been repeated in the sale we postulate of the property taken" (*United States* v. *Toronto, etc. Navigation Co.*, 338 U. S. 396, 402). Hence on a record like this, "recourse must be had to other means of ascertaining value, including even value to the owner * * *" (*Kimball Laundry Co.* v. *United States*, 338 U. S. 1, 6).

Here the award was $410,000 less than the price refused by the owner.

The uncontradicted proof showed that the building alone could not be reproduced for less than $7,500,000 (p. 31).

Admittedly the building would command rents proved by the owner—"you have rents of $1.25, $1.50 and $1.75. Now that is true, they were that much" (p. 209)—and such rents, as the Trial Judge said, showed "that on the capitalization basis this building is worth $5,000,000" (p. 344).

In the face of these facts, it was wholly indefensible to make an award of $3,090,000 on the sole basis of four "sales" such as those relied on below.

The complete disregard of the income approach is the basis of this petition. The Trial Judge accepted the Government's contention that capitalization, ordinarily the prime factor in valuing income property, was rendered "unreliable" in 1947 because of the State rent control act (pp. 209-10, 257-8, 506-7).

We maintained below and here urge that the existence of a rent control law is merely another fact in

the valuation complex, not an excuse for violating the principles of just compensation.

Beyond this, it was shown by the testimony of leading bank and insurance officials that responsible lending institutions in New York gave prime weight to capitalization during the existence of the rent control law (*post*, p. 18).

Though the courts below refused to consider the income approach, such was not the Government's position. Capitalization of estimated net income was used by the Government in support of the so-called "comparative sales". But the Government in so using the income approach gave no heed to admitted earning power: it took as its "earnings" base a net income derived from the New York "emergency rent", and the Trial Court, though rejecting the method (p. 507), adopted the end result.*

To accept a result so arrived at violates every concept of due process. A result must be tested by the means used to achieve it. This result does not survive that test. The "emergency rent", as the court below recognized, was not a proper basis of valuation in 1947, when the property was taken. It was a purely arbitrary amount, *viz.*: the rent of March 1, 1943 plus 15% (L. 1945, ch. 3, §2(e); Uncons. L. [65 McKinney's Cons. L., part 2], §8522e). Beyond this, the state law in terms contained mandatory relief against the rigors of the "emergency rent" formula. A "reasonable rent based on the fair rental value"

* "It is my finding that at the time of the taking the market value of claimant's building, as such, was certainly not more than $3.50 per square foot, *the value for which the government contends*" (Opinion, p. 513).

and "exceeding the emergency rent" could be fixed by agreement, by arbitration or by application to the New York Supreme Court (ibid., §8524). These provisions had saved the constitutionality of the rent control statute under state law (*Twentieth Century Associates* v. *Waldman,* 294 N. Y. 571, 581).

Thus there is ample reason for this cause to be heard, since the owner of property taken *in invitum* has here had his compensation measured not by its conceded earning power or any finding of its fair rental value, but by four worthless sales and a rental of 52½¢ per square foot—the "emergency rent" paid by "people who were willing to sit tight and take advantage of the rent laws" (Shlichta, for the Government, at p. 209).

Questions Presented.

1. Is a federal court in eminent domain justified by the existence of a state emergency rent control law in refusing to give any consideration to the income approach and basing its award on sales alone, where the few "sales" relied on could not, as a matter of law, establish the market value of the condemned premises?

2. Under such circumstances, may a federal court *because* of the emergency rent law refuse to do what the state court would be obliged to do *under* the emergency rent law (*i. e.*: determine the fair rental value of the subject premises), where such a determination is material to the admeasurement of fee value and no other legally adequate method of admeasurement was found?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

Petitioner relies on Rule XXXVIII (5)(b) in so far as it indicates that the Court will consider an application for a writ where a Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

We find no case in which the Court has considered the effect that should be given a state emergency rent control law in a federal proceeding for the condemnation of real property.

United States v. *Commodities Trading Corp.*, 339 U. S. 121, referred to by the Trial Judge on oral argument (pp. 603 *et passim*), did not answer the question here presented. There, five justices held that the owner of pepper taken during the war for Government use must needs remain satisfied upon receiving the OPA ceiling price, since that represented the highest market price obtainable under federal law.

The difference here is apparent. This was a state, not a federal regulation. It did not limit or control the price at which the owner could sell, but only the rent he could charge. Further, though the state law contained a rent ceiling, it also contained judicial and arbitrational machinery for fixing reasonable rentals in disregard of the ceiling.

Absent any possibility of deriving a market value from sales of similar property, the Trial Court here refused to perform the duty enjoined by the very state law it relied on as the excuse for non-performance. The state law directs the state courts to find

fair rental values notwithstanding the emergency. The state courts have stressed the constitutional importance of this mandate (*Twentieth Century Associates* v. *Waldman*, 294 N. Y. 571, 581), and obeyed it in countless proceedings brought thereunder (see, *e. g.*, cases tabulated at p. 612). But here a federal court, faced with the duty of making just compensation in eminent domain, has elected to rely on admittedly worthless evidence, pleading that because of the emergency rent law it could not find the fair rental value and thus admeasure fee value on a rational basis.

In the words of Mr. Justice Cardozo, "A *non possumus* so feeble has no warrant in the statute." (*Matter of Kaufmann*, 245 N. Y. 423, 429.)

If this be judicially permissible, then the owner of property taken by the Federal Government can not hope to receive rational treatment if his property lies in a state that controls rents, unless he can perchance establish market value by sales of similar property.

Hence, and for the further reasons given in the brief subjoined, the existence of a question deserving of review is respectfully suggested.

Prayer.

Petitioner prays that a writ of certiorari issue to the United States Court of Appeals for the Second Circuit commanding said court to certify and send to this Court a transcript of the record in this cause, to the end that the same may be here reviewed and de-

termined; that the judgment and decision of said Court of Appeals be reversed and a new trial ordered; and that petitioner have such other relief as may be proper.

Dated: New York, N. Y., February 15, 1952.

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Defendants.

BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The opinion of the District Court (Kennedy, *Dt. J.*) is reported in 92 Fed. Supp. 384. The *per curiam* opinion of the Court of Appeals for the Second Circuit (Swan, L. Hand and A. N. Hand, *Ct. JJ.*) is not yet reported.

Jurisdiction.

The judgment of the Court of Appeals was entered on January 2, 1952. The jurisdiction of this Court is

invoked under Sections 1254 (1) and 2101 (c) of Title 28, United States Code.

Statement of the Case.

This is set forth in the petition (at pp. 2-6) under the heading "Summary Statement of Matter Involved".

Constitutional Provision and Statutes Involved.

Amendment V to the Constitution of the United States provides, in appropriate part:

> "No person shall * * * be deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Declaration of Taking Act (46 Stat. 1421; 40 U. S. C. §258a *et seq.*) provides in appropriate part:

> "In any proceeding in any court of the United States * * * for the acquisition of any land * * * just compensation shall * * * be ascertained and awarded in said proceeding and established by judgment therein * * *."

The New York Emergency Commercial Space Rent Control Law (L. 1945, ch. 3, as amd.; Uncons. L. [65 McKinney's Cons. L., part 2] §§8520 *et seq.*) provides in appropriate part:

> "§8522. Definitions * * *
>
> (e) 'Emergency rent.' The rent reserved or payable * * * on March first, nineteen hundred

forty-three, plus fifteen per centum of such rent * * *

§8524. Determination of reasonable rent by court * * *

A rent, exceeding in amount the emergency rent may * * * be fixed by arbitration or by the supreme court. The rent to be so fixed shall be a reasonable rent based on the fair rental value of the tenant's commercial space * * *

In lieu of the provisions contained elsewhere in this section * * *, the tenant and the landlord may fix a reasonable rent by written agreement * * *"

Specification of Errors Intended to Be Urged.

The courts below erred in:

1. Rendering an award that had no arithmetical basis other than a square-foot unit derived solely from four sales incapable of establishing the "market value" of the premises taken.

2. Disregarding other relevant evidence of value, namely:

a. The admitted earning power of the property;

b. The value of the property to the owner as evidenced by the owner's refusal to entertain an offer exceeding the amount of the award.

3. Refusing, because of the state emergency rent law, to consider the conceded earning power of the building or to make a finding as to its fair rental value as a factor in admeasuring the value of the fee.

ARGUMENT.

POINT I.

The four Government sales as a matter of law could not establish the "market value" of the taken property.

The courts below relied on four "sales" as establishing a unit fee value for the building of $3.50 per square foot (pp. 509-13). The building award was thus made at $2,450,000 by simple multiplication (p. 513).

One of the "sales" so relied on was not a sale at all. The "seller" and the "buyer" were two corporations owned by the same man (p. 260). The Government witness admittedly would not rely on evidence of this kind in making an appraisal (p. 261). But it was relied on below, the Court saying (p. 510):

> "* * * It is almost impossible to understand what motive was to be served by placing upon the transaction a price ruinously low."

The capital gains tax suggests itself as one obvious possible motive.

Sale No. 11, also relied on, was a sale by Metropolitan Life Insurance Company in 1945 under the compulsion of New York Insurance Law §81(7). The last paragraph of that section required life insurance companies doing business in New York to liquidate all real estate acquired in satisfaction of mortgages within five years after acquisition unless

the Insurance Superintendent gives a certificate excusing "the forced sale thereof".

In 1945 (the year World War II ended), Metropolitan liquidated a huge portfolio of real estate taken in during the depression. In Manhattan alone, it sold off twenty-four major buildings for a total price of $17,545,000. Our exhibit, an extract from Metropolitan's Annual Report (Exhibit "6", p. 402), shows that every one of the twenty-four was sold at its approximate cost or book value.

Another sale involved a building that was under an unfavorable lease to the buyer (pp. 268-9, 375-6). In such a case, the owner parts with something less than unencumbered fee value. Were a property so encumbered taken in eminent domain, the owner would receive less than fee value and the tenant would receive a sum representing the present value of his leasehold. (See pp. 262-3.) Thus, such a sale would not be evidence of unencumbered fee value; it would only show the value of an interest similarly encumbered.

Thus, only one of the four sales relied on (Sale No. 3) had any bearing on market value. One sale, as we shall show, does not establish a market. Beyond this, the building there involved was an elderly store building in a different neighborhood in no way comparable to the subject premises (pp. 217, 267, 374-5, 510).

Thus, there was ample reason for the Court to apologize for basing its building award on such sales as these, taking them into consideration "for what they are worth" (p. 509). The sales here relied on

had far less relevance than the five sales considered in *United States* v. *Toronto, etc. Navigation Co.*, 338 U. S. 396. That case involved the taking of a Great Lakes car ferry. Two of the five sales were of vessels built from the same plans, though in poorer repair than the vessel taken. Three were sales of other "similar" vessels, also in poorer repair (p. 400). But all five sales were at arm's length and free of compulsion, so far as the opinion shows. On these facts, Mr. Justice Clark said (pp. 402-3):

> "* * * the determination of value cannot be reduced to inexorable rules. Suffice to say that the balance between the public's need and the claimant's loss has been struck, in most cases, by awarding the claimant the monetary 'market value' of the property * * *
>
> At times, however, peculiar circumstances may make it impossible to determine a 'market value.' There may have been, for example, so few sales of similar property that we cannot predict with any assurance that the prices paid would have been repeated in the sale we postulate of the property taken. We then say that there is 'no market' for the property in question. * * *
>
> We agree with the Court of Claims that in this case, there was no Great Lakes 'market' in the sense discussed above. We hardly think that five sales of dissimilar vessels require a finding that any one of the varying prices would have been repeated had the *Maitland* been offered for sale. And so we are in basic agreement that other measures of value may be relevant."

We note that the absence of any finding below that the four "sales" relied on established a "market".

The only finding as to these sales is that they are so poor in relevance that the Court could use them only as a last resort "for what they are worth" (p. 509).

Thus the case falls within the rule stated above. Or, as stated by Mr. Justice Frankfurter in *Kimball Laundry Co.* v. *United States,* 338 U. S. 1:

> "If exchanges of similar property have been frequent, the inference is strong that the equivalent arrived at by the haggling of the market would probably have been offered and accepted, and it is thus that the 'market price' becomes so important a standard of reference. But when the property is of a kind seldom exchanged, it has no 'market price', and then recourse *must be had* to other means of ascertaining value, including even value to the owner * * *" (p. 6).

POINT II.

The income approach should have been taken into consideration.

At page 513, the Court below enumerates the matters given consideration in reaching its award. Earning power is not there mentioned.

Elsewhere (p. 513), the Court says

> "my valuation of the building is not at all upon an income basis".

At pages 505-7, the Court states that it disregarded capitalization of net income because, in its view, the existence of the state emergency rent law made it impossible to reach a reliable estimate. Yet, there was

uncontradicted testimony by the President of the Dry Dock Savings Bank, the President of the Prudential Savings Bank of Brooklyn, the Vice-President in charge of real estate of the Irving Trust Company of New York and the Assistant Chief Appraiser of the New York Life Insurance Company that in the year of taking, notwithstanding the existence of the emergency rent law, the prime factor in appraising improved real estate for mortgage loan purposes was "the net stabilized income that we think the property will produce over the period of our loan" (p. 336; see also pp. 354, 356, 360).

Beyond this, in *United States* v. *Improved Premises known as the Cadillac Building*, 80 F. Supp. 55, the same District Judge had made a finding of fair rental value notwithstanding the New York rent control law.* (See also *Ernst* v. *Oberferst,* 166 F. 2d 519, 523 (C. A. 2, 1948), holding that a bankruptcy court sitting in New York may itself fix a reasonable rent under the local rent law without referring the issue to the state court.)

Here, the earning power of the subject premises was established by competent testimony. Petitioner showed that the floor units of 49,000 square feet here available were rare and in high demand by mail order and chain store houses (pp. 64-5). The year of the taking, thirty named companies were in the market for such units on long-term leases (pp. 365-6). Hence, had the Government yielded possession instead of condemning on the expiry of its lease, the entire

* He there said (80 F. Supp. at 58), "It seems to me that it is my task to test the conflicting claims of the parties to this litigation in an effort to determine which of the annual rentals suggested *more nearly meets the standard of what is fair and reasonable*, treating the New York statutory formula not as a mandate binding on the federal court either in whole or in part, but rather as *one of several possible guides.*"

building could have been rented within a few months at rentals averaging $2 per square foot on long-term leases (pp. 80, 86). Thus, after allowing all normal safety factors, the long range "stabilized" rent would be not less than $1.12½ per square foot, or a net rental, after operating expenses, of 53¢ per square foot (pp. 109, 114-5, 418, 419). Capitalized at 5% for the rent and 8% for the building,* the resulting value would be $5,030,000 (p. 418).

Thus, there was a direct conflict between the value based on capitalization and the value based on the so-called "sales". At page 344, the Court said:

> "The Court: I assure you, Mr. Witness, that in this very case the testimony has been that on the capitalization basis this building is worth $5,000,000, and I assure you, Mr. Witness, that the testimony on the comparative sales method is that the building is worth $3,000,000."

This petition is made possible because the Government substantially conceded the factual basis of the owner's capitalization formula. The rents were admittedly obtainable: the Government's expert testified,

> "you have rents of $1.25, $1.50 and $1.75. Now that is true, they were that much" (p. 209).

Beyond this, the capitalization rates adopted by the Government did not differ materially from the rates used by the owner (p. 486).

But in using capitalization, the Government tried to carry water on both shoulders. On the one hand

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* The Government used 6% and 9% (Ex. DD). Substituting these factors in claimant's appraisal, the result would be $4,672,000.

(pp. 209-10, 257-8), the Government argued that the rent control law made capitalization too unreliable to be used at all. Elsewhere (pp. 230-1, 486), it argued that the rent control law made it necessary to disregard the conceded earning power of the building and use the "emergency rent" as the capitalization base.

In making both of these assumptions, the Government proceeded on a fatally wrong premise (see our motion to strike, at pp. 361-3). The Government's appraisal (Ex. DD, at p. 486) says:

> "Emergency Rent Law in the State of New York provides for rental increase of 15% over those in effect as of stabilization date. *Undoubtedly the owner by appropriate action could justify and secure such an increase.* In the following analysis the Emergency Rent of $368,000 per annum has been adopted."*

The Government's witness orally repeated this assumption (p. 245):

> "The [New York] Supreme Court will allow you $368,000 as an emergency rent."

This was a complete misunderstanding. Under Section 2(e) of the New York Commercial Rent Law (L. 1947, ch. 822), the increase of 15% was *entirely automatic.* By "appropriate action", however, the owner could obtain a larger rent upon a proper showing of a higher rental value:

> "A rent, *exceeding* in amount the emergency

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* Since the building contained 700,000 sq. ft. of rentable space (p. 513), the "emergency rent" by computation would be 52½¢ per sq. ft.

> rent, may within the limitations specified by this section, be fixed by arbitration or by the supreme court. The rent to be so fixed shall be a reasonable rent based on the fair rental value of the tenant's commercial space * * *" (*ibid.*, Sec. 4).

In *Twentieth Century Associates* v. *Waldman*, 294 N. Y. 571, this provision was cited as saving the constitutionality of the entire statutory scheme. Thacher, *J.*, said:

> "Certainly there was nothing arbitrary or unreasonable in the remedy which the Legislature applied, providing, as it did, for arbitration or judicial determination of fair and reasonable rentals in all cases. Under the provisions of section 4 of the act * * * Judicial determination of a reasonable rent was thus made available to the landlord in every case" (p. 581).

If a landlord had leased an office building for fifty years at a rent of $10,000 a year with a lease which expired shortly after the emergency rent date, and comparable buildings were renting for $100,000 a year, on the theory below, the statutory emergency rent based on the rent of fifty years ago would be controlling in a federal court condemnation, even though it was perfectly clear that the landlord could go into the New York court and obtain a very great increase in rental.

The Trial Judge, in the *Cadillac* case, met the same problem in a proper way. He says at page 363 of the present record:

> "After holding that both the Government and the claimant were wrong in their approach to the

> question I insisted upon them giving me a fair market value."*

Here, however, he solved the same problem by simply ignoring the Government's manifest mistake and giving no consideration to rental values. We maintain that this was a denial of just compensation. We further maintain that the Government's error infects the Government's appraisal. We finally maintain that the award in accepting the Government's building appraisal to the penny is similarly infected.

This Court has recently indicated that in the case of income-producing property, even the so-called market data approach is merely a means of expressing income-based values in an indirect way, since it depends on tacit assumptions as to the capitalization factors used by the buyers and sellers of other income properties. Thus in *Kimball Laundry* Mr. Justice Frankfurter says (338 U. S. at 9, 10):

> "The market value of land as a business site tends to be as high as the reasonably probable earnings of a business there situated would justify * * *. As fixed by the market, value is no more than a summary expression of forecasts that the needs and attitudes which made up demand in the past will have their counterparts in the future."

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* This was correct under the state rulings that "the presumption in favor of the 'emergency' rent is rebuttable", and this in turn "requires that an opportunity be given for a determination of the amount of the 'reasonable' rent" (*Joanette Juniors, Inc.* v. *Princeway Realty Corp.*, 272 App. Div. 420, 423). And see: *Smith* v. *Feigin*, 276 App. Div. 531, 535.

So, in Dolan,* *Court Practice in Condemnation Suits*, 31 Va. L. Rev. 9, 22, the author says:

> "The capitalization method * * * has only recently found favor with the courts, although no doubt there is no truer or more accurate index of valuation for income types of property. * * * *The capitalization method is particularly adapted to this type of property valuation, in view of the difficulty in making proper adjustments and allocations for non-conforming features when applying the comparison method.* The courts have pointed out that this method is particularly suitable where there is an absence of comparative sales."

McMichael says (*Appraising Manual*, 3rd Ed.):

> "Value may be determined by the comparison method * * *. Residences are appraised in this way * * *. Business properties are best appraised on an earning basis" (p. 83).

Mr. Dolan gives the reason:

> "The question uppermost in the minds of the owner or purchaser of an industrial or income type of property is what the property will produce in the way of income and the justified capital investment, based on such net income" (31 Va. L. Rev., at 22).

For a provocative discussion of the capitalization method and the experience of the New York courts in using it, see the opinion of Referee John Godfrey Saxe in *In re N. Y. Title & Mortgage Co.* (not officially reported), 21 N. Y. S. 2d 575, at 594-6.

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* Harry T. Dolan, Esq., trial counsel to the Government in in this case.

POINT III.

The State Emergency Rent Laws are only a part of the factual complex that would be considered on an actual sale. There is no warrant for giving them conclusive effect, as was done below in disregarding the actual earning power, capitalizing the "Emergency Rent" and using worthless sales for comparison.

We grant that the scope of appellate review in these cases is very limited. As Mr. Justice Frankfurter says concurring in *Toronto* (338 U. S. at 408):

> "Barring obviously wrong criteria, or findings baseless in proof, experience counsels empiricism in dealing with these problems."

Empiricism, we submit, is not a policy of sanctioning manifest errors or awards in eminent domain based on worthless proof to the total exclusion of other evidence of value. Certainly empiricism cannot justify a federal court in throwing up its hands and failing to award just compensation because of a state emergency rent control law.

Were the sales relied on sufficient to establish the market value of the condemned premises, this petition could not be made. Where, however, the basis for the award selected below is clearly inadequate under the pertinent decisions of this Court, and where other relevant indicia of value are disregarded because of a purely temporary state regulation never intended to affect a case of this kind, an important question of federal law is clearly presented for review.

CONCLUSION.

The decision of the Trial Court, adopted *in toto* by the Court of Appeals, presents a grave question as to the criteria affecting just compensation and the effect to be given in eminent domain to a state statute regulating rents, and thus raises a question of general and constitutional importance which should receive review at the hands of this Court.

Respectfully submitted,

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